1974
Dec. 3

ANDREAS D. GEORGHIADES

v.

CHARIS LOIZOU THROUGH HIS MOTHER AND NEXT FRIEND AND RELATIVE ELENI LOIZOU AND ANOTHER

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

ANDREAS D. GEORGHIADES,

Appellant - Defendant,

v.

CHARIS LOIZOU, MINOR THROUGH HIS MOTHER AND NEXT FRIEND AND RELATIVE, ELENI LOIZOU AND ANOTHER,

Respondents - Plaintiffs.

(Civil Appeal No. 5195).

Negligence—What constitutes negligence—Road traffic accident—Duty to take sufficient precautions to avoid the accident—Users of the road— Duty to one another—Apportionment of liability—Causative potency of the acts or omissions of each of the parties concerned and blameworthiness should both be taken into account—Cf. infra.

Road traffic accident—Child knocked down by motor vehicle, when dashing suddenly from behind a stationary van (parked on the side of the road), to cross the road—Motorist driving at reasonable speed in the middle of the road, no other vehicle coming from the opposite direction—And on seeing the child at a very short distance in front of him applied his brakes and took avoiding action—Finding of the trial judge that the driver did not take sufficient precautions to avoid the accident not open to him on the evidence—Driver not to blame at all for the accident—Appeal by driver allowed.

Apportionment of liability—Causative potency of the acts or omissions of each of the parties concerned and, also, blameworthiness—Should both be taken into account—Cf. supra.

Users of the road—Duty to one another—Cf. supra.

The respondent, who is a child, sustained personal injuries in a road traffic accident on the morning of May 28, 1971 within the village of Potamos tou Kambou. At the time, the appellant was driving his car at a reasonable speed

in the middle of the road (no other vehicle coming from the opposite direction), when the child suddenly dashed from behind a van parked on the berm to cross the road. In seeing the child at a very short distance in front of him the driver (appellant) immediately applied his brakes and took avoiding action by swerving to his left. These efforts proved of no avail and the child was eventually knocked down and injured. Hence this action for damages for personal injuries. The trial judge found that in the circumstances the driver (defendant, now appellant) did not take sufficient precautions to avoid the accident and that he was wholly to blame; and awarded to the child general and special damages, £600 and £400, respectively.

On appeal by the driver (defendant), the Supreme Court set aside the judgment of the trial judge and held that (1) the finding that the driver failed to take sufficient precautions to avoid the accident was not open to him in the circumstances; and (2) the driver (defendant-appellant) is not, therefore, to blame at all for the accident. Taking into consideration the fact that the plaintiff is a child, the Court made no order as to costs.

Appeal allowed.
No order as to costs

Cases referred to:

Pourikkos v. *Fevzi* (1963) 2 C.L.R. 21, at p. 31;

Nance v. *British Columbia Electric Railways Co. Ltd* [1951] A.C. 601, at p. 611;

Nicolaou v. *Zayer* (reported in this Part at p. 156, *ante*);

Fardon v. *Harcourt-Rivington* [1932] All E.R. Rep. 81, at p. 83;

Grant v. *Sun Shipping Co. Ltd.* [1948] 2 All E.R. 238, at p. 247, H.L.;

Miraflores and Abadessa [1967] 1 All E.R 672, at pp 677-678, H.L

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 28th May, 1973, (Action No. 5647/71) whereby the

defendant was ordered to pay the sum of £1,000.- to plaintiff No. 1 as special and general damages for injuries suffered as a result of a traffic accident.

D. Liveras, for the appellant.

E. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by :-

HADJIANASTASSIOU, J. : On May 28, 1971, the plaintiff, Haris Loizou, was injured in a road traffic accident, within the village of Potamos tou Kambou, whilst he was crossing the road when he was hit by a motor car driven by the defendant, Andreas D. Georghiades (Registration No. FF 686) and as a result of this accident, he suffered injuries and brought an action against the defendant claiming general and special damages.

On May 28, 1973, the President of the District Court of Nicosia found that the defendant was wholly to blame for the accident, and awarded to the minor the sum of £600 general damages and the amount of £400 special damages.

On June 22, 1973, the defendant appealed, and although the notice of appeal raised more points, finally counsel argued these two points : Firstly that the finding of the trial judge that the plaintiff was wholly or at all to blame for the accident and that the plaintiff was not guilty of contributory negligence because of his age was wrong in law and was based on non-existing evidence regarding the age of the minor; and secondly, that the amount of £600 awarded to the plaintiff as general damages was manifestly an excessive figure not supported by the evidence once it was accepted by the trial judge that the minor would be left with no permanent incapacity.

The facts are simple : The plaintiff, who is a minor, apparently followed his aunt, Metaxoulla Dinou, who was going to a nearby van which was parked with its doors open on the berm on the opposite side of the road, in relation to her house, for the purpose of buying cucumbers. The defendant, just before the accident, was driving his motor car from Xeros to Kato Pyrgos, and

when he was within the village, the aunt of the minor started crossing the road—which has a width of 18'7" with berms on both sides—from the van in an oblique direction to go to her own house. Before she completed the crossing she saw the defendant driving from the opposite direction and they both exchanged a greeting. But before she reached the opposite berm she heard the screeching of brakes, she looked back, and saw her nephew lying on the ground and the car of the defendant stationary.

It appears that the aunt had not realized that the child had followed her earlier, and that he was also standing behind the stationary van. When she started crossing, apparently her nephew also followed her in order to catch up with her. Whilst the child was crossing he met with an accident and according to an eye witness, the child, before crossing, paused, looking to both directions and then started walking in a hurried pace. He further added that the place where the child was standing was visible to the driver who was coming from Xeros and kept in the middle of the road.

The learned judge, dealing with the evidence of this witness, came to the conclusion that he was not a reliable witness because he showed a desire to help the plaintiff, and particularly because his version that the child before crossing paused looking to both directions was unnatural and highly improbable, because children of that age have no road sense and even if they are trained they will very rarely do what they were taught.

On the other hand, the version of the defendant, a teacher at Neapolis Gymnasium, is that on the date of the accident he was driving from Xeros to Potamos tou Kambou during the daytime, keeping the centre of the road, because he saw a number of women standing on the left in relation to his course. When he reached a point outside the house of the complainant, his speed was very low, about 15 - 20 m.p.h., and when he reached the front end of the van, he saw the child dashing from behind the van in order to cross the road. He immediately applied his brakes, turning slightly to the left to avoid hitting the child, but as he did not succeed, the child was hit by the right headlamp of the car. He

added that his car almost stopped before coming into contact with the child. In cross-examination, he denied that he did not see the child because he was looking to his left to greet the aunt of the child.

The learned trial judge, dealing with the question as to whether the child dashed from behind the stationary van, and appeared suddenly at the scene without his presence being possibly anticipated by the defendant, had this to say :-

> "The accident happened on a fairly wide road with people walking at the left of the defendant and with at least one woman crossing the road in front of him, coming from the direction of the van which had its doors open. The defendant must have seen the woman walking on his left side before noticing P.W. 3 crossing the road because had he seen her before, he would not move to the centre of the road and so place himself almost directly in front of the crossing woman. If he had a better look out, he would have noticed that something was going on in the region of the parked van. His speed was not high but the duty of a driver traversing a thoroughfare with pedestrians walking about is to exercise such care as to be in a position to stop in time if he is faced with any foreseable eventuality.
>
> A driver should observe the whole area ahead at a wide angle and his observation should not at all be relaxed unnecessarily even for a fraction of a second for the consequences may be great. The defendant in the particular circumstances of this case, did relax his observation by exchanging greetings with P.W. 3, who at the time was in the process of crossing the road and towards his left side. The fact that this particular woman was crossing the road from the direction of the parked van is in itself an indication that people were standing behind the van and that others might have also tried to cross the road in the same way."

Later on, the learned trial judge, after dealing with the constituents of negligence, said :-

> "The accident is due to a greater degree to the

child's negligence and to a lesser degree to the relaxation of the defendant's observation in consequence of which his reactions in taking avoiding action were delayed. It is also to be noted that by this momentary relaxation of his observation, the distance covered by his vehicle before he could react to the emergency was thus increased. It is true that the defendant almost avoided the accident but definitely his avoiding action would have been effectual if he kept his observation constant and undistracted."

The question which now falls to be determined is whether on these facts the defendant took sufficient precautions to avoid the accident when he saw the child crossing. That he did take precautions to avoid it, there is no doubt; but were those precautions sufficient in the circumstances? (*Pourikkos* v. *Fevzi* (1963) 2 C.L.R. 24 at p. 31, where reference is also made to the case of *Nance* v. *British Columbia Electric Railways Co. Ltd.* [1951] A.C. 601 at p. 611, regarding the duty of the users of the road to one another).

It is well-settled that negligence is the failure to take reasonable care in the particular circumstances, and in each case the question whether a person has been negligent is a question of fact (*Nicolaou* v. *Zayer*, (reported in this Part at p. 156, *ante*)). In *Fardon* v. *Harcourt-Rivington* [1932] All E.R. Rep. 81 at p. 83, the principle formulated by Lord Dunedin in the House of Lords, is to the effect that if the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence; but if the possibility of danger emerging is only a mere possibility which could never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions. This statement is regarded as applying generally to actions in which the negligence alleged is an omission to take due care for the safety of others; and it must follow that a prudent man will guard against the possible negligence of others, when experience shows such negligence to be common. (*Grant* v. *Sun Shipping Co. Ltd.* [1948] 2 All E.R. 238 (H.L.) at p. 247).

There is no doubt that the trial judge in order to

ascribe liability for the damage on the evidence before it, in proportion to more than one person, addressed his mind not only to the causative potency of the acts or omissions of each of the parties, but to their relative blameworthiness. This position appears clear in the *Miraflores and the Abadessa* case, [1967] 1 All E.R. (H.L.) 672, where Lord Pearce said at pp. 677-678 :-

> "..... but the investigation is concerned with 'fault' which includes blameworthiness as well as causation; and no true apportionment can be reached unless both those factors are borne in mind."

To revert to the present case, the plaintiff dashed suddenly from behind the van to cross the road when the defendant was driving in the middle of the road (no other vehicle was coming from the opposite direction) and the driver, in seeing the child, immediately applied his brakes and took avoiding action by swerving to his left.

In all these circumstances and having regard to the shortness of the distance from the driver when the plaintiff dashed wrongly into the street, we are of the view that the finding of the trial judge that the defendant did not take sufficient precautions to avoid the accident because his observation did not remain constant and undistracted—having greeted the aunt—was not open to him on the evidence; and that such finding or inference drawn by him was based on the calculations made by him regarding the observation of the driver, and, therefore, we think that such finding was not warranted and should be disturbed.

For the reasons we have endeavoured to explain, we came to the conclusion that the defendant has taken sufficient precautions in the circumstances of this case, and is not therefore to blame at all for the accident. In view of our finding on the question of liability, we consider it unnecessary to deal with the second ground of Appeal on the question of general damages. We, therefore, set aside the judgment of the trial judge, allow the

appeal, but in view of the fact that the plaintiff is a child, we are not making an order for costs in favour of the defendant.

Appeal allowed, no order as to costs.

Appeal allowed.
No order as to costs.

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